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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/881,609	06/14/2001	Leo Mark Pedlow JR.	50P3990.01	6398

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EXAMINER

SHELEHEDA, JAMES R

ART UNIT PAPER NUMBER

2623

DATE MAILED: 04/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/881,609

Applicant(s)

PEDLOW, LEO MARK

Examiner

James Sheleheda

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 20-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 12 is objected to because of the following informalities:

In claim 12, line 2, "the control server" should be changed to --the server-- to maintain consistency with the terminology utilized within the previous claim.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-12 and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Payton (5,790,935).

As to claim 1, Payton discloses a video on demand system (Fig. 2; column 4, lines 8-44), comprising:

a transmission channel (over digital transport system, 26; Fig. 2; column 4, lines 45-64);

a plurality of receivers coupled to the transmission channel (local servers, 28 for each subscriber; Fig. 2; column 4, lines 45-54), a VOD client at each receiver capable of

subscribing to one or more VOD sessions over a transport stream (column 6, lines 20-36 and column 7, lines 13-35);

a headend (24) coupled to the transmission channel (Fig. 2), said headend including a video server that can transmit one or more VOD session to one or more receivers (column 4, line 55-column 5, line 5 and column 7, lines 13-35), and a control server coupled to the video server (scheduling processor; 46; Fig. 2), the control server to dynamically allocate and terminate VOD sessions over the transport stream as VOD clients are added and terminated (transmitting VOD movies as they are requested by the subscribers; column 7, lines 12-35 and column 5, lines 31-45), and, if necessary, to cause the video server to transmit one or more dummy sessions over the transport stream (transmitting content which has not been requested, but is recommended for some subscribers; column 5, lines 6-31 and column 7, lines 36-47) to maintain a predetermined minimum bandwidth of content over the transport stream (column 7, lines 36-60).

As to claim 2, Payton discloses wherein the control server will prevent each receiver from decoding the dummy sessions (wherein the stored content is encrypted to prevent unauthorized access; column 4, lines 64-66).

As to claim 3, Payton discloses wherein the control server will, if necessary, transmit one or more dummy sessions over the transport stream to maintain a minimum bandwidth of content over the transport stream (column 5, lines 6-31 and column 7,

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lines 36-60) to ensure that each receiver can synchronize to a subscribed VOD session (ensuring that every subscriber can receive, and thus synchronize, with their MPGE movie by ensuring that recommended ones are transmitted in advance; column 3, lines 34-42 and column 4, lines 59-64).

As to claim 4, Payton discloses wherein the control server is configured to determine whether the bandwidth of content over the transport stream is below a predetermined threshold (wherein it is determined that the used bandwidth is low enough to allow the transport of additional VOD content; column 7, lines 36-47) and to cause the video server to transmit one or more dummy sessions, as necessary, to maintain the bandwidth of content at the predetermined threshold (wherein the utilized bandwidth level falls low enough to allow the transport of additional content, the available content is then utilized to transport a recommended movie; column 7, lines 36-60 and column 5, lines 22-31).

As to claim 5, Payton discloses wherein each receiver includes a demodulator (inherently present to allow the set top box to receive the broadcast cable and satellite signals, which are modulated onto carrier signals; Fig. 2; column 4, lines 23-34), decoder (60, converting the MPEG video for display; column 6, lines 11-19 and column 4, lines 59-64) and an MPEG frame synchronizer (inherently present, as this is required for the decoder to synchronize with the MPEG stream and properly identify the start of

the MPEG packets, through a sliding checksum; column 6, lines 11-19 and column 4, lines 59-64).

As to claim 6, Payton discloses wherein said headend includes a transmitter (Fig. 2; inherently present to transmit the content) having an MPEG frame synchronizer (inherently present, as this is required for the encoder to provide a stable stream of video to the encoder; column 6, lines 11-19 and column 4, lines 59-64), encoder (inherently present to have encoded the MPEG video; column 4, lines 59-64) and modulator (inherently present to allow the system to distribute the television signals; column 5, lines 55-67).

As to claim 7, Payton discloses wherein the transport stream is over a radio frequency channel (Fig. 2; satellite broadcast).

As to claim 8, Payton discloses wherein the video server can transmit one or more VOD sessions over one or more RF channels each associated with a transport stream (Fig. 2; broadcast satellite or cable channels; column 4, lines 7-22 and column 8, lines 11-15) and wherein said control server, if necessary, to cause the video server to transmit one or more dummy sessions over each transport stream, as necessary, to maintain a predetermined minimum bandwidth of content, over each of the one or more transport streams (transmitting content which has not been requested, but is recommended for some subscribers; column 5, lines 6-31 and column 7, lines 36-47).

As to claim 9, Payton discloses wherein the control server receives a request for a new VOD session from a VOD client (column 7, lines 12-35 and column 5, lines 31-45), the control server terminates one or more of the one or more dummy sessions (wherein the refresh queue item is transmitted and removed from the queue; column 7, lines 36-60 and Fig. 3c), and causes transmission of the new VOD session over the transport stream (wherein the system will then send the next on-demand item when the bandwidth becomes available; column 7, lines 36-60 and Fig. 3c).

As to claim 10, Payton discloses a video on demand server (24, Fig. 2; column 4, lines 8-44), comprising: a server that receives request from one or more VOD clients for one or more VOD sessions (transmitting VOD movies as they are requested by the subscribers; column 7, lines 12-35 and column 5, lines 31-45), causes transmission of one or more VOD sessions over a transport stream to one or more VOD clients (transmitting VOD movies as they are requested by the subscribers; column 7, lines 12-35 and column 5, lines 31-45), determines whether the number of VOD sessions transmitted over the transport stream is below a minimum threshold (determining less VOD movies are being transmitted then is possible; column 7, lines 36-60), and causes transmission of one or more padding sessions over the transport stream if the number of VOD sessions transmitted over the transport stream is below the minimum threshold to maintain the number of VOD sessions at or above the minimum threshold (transmitting content which has not been requested, but is recommended for some

subscribers, whenever it is detected that enough bandwidth for another movie is available; column 5, lines 6-31 and column 7, lines 36-47).

As to claim 11, Payton discloses wherein the video server causes transmission of VOD sessions over a plurality of RF channels each associated with a transport stream (Fig. 2; broadcast satellite or cable channels; column 4, lines 7-22 and column 8, lines 11-15), the server determines, for each transport stream whether the number of VOD sessions is below the minimum threshold (transmitting content which has not been requested, but is recommended for some subscribers, whenever it is detected that enough bandwidth for another movie is available; column 5, lines 6-31 and column 7, lines 36-47), and, for each transport stream, causes transmission of one or more padding sessions if the number of VOD sessions transmitted over the respective transport stream is below the minimum threshold to maintain the number of VOD sessions at or above the minimum threshold (transmitting content which has not been requested, but is recommended for some subscribers, whenever it is detected that enough bandwidth for another movie is available; column 5, lines 6-31 and column 7, lines 36-47).

As to claim 12, Payton discloses wherein the control server receives a request for a new VOD session from a VOD client (column 7, lines 12-35 and column 5, lines 31-45), the control server terminates one or more of the one or more padding sessions (wherein the refresh queue item is transmitted and removed from the queue; column 7,



lines 36-60 and Fig. 3c), and causes transmission of the new VOD session (wherein the system will then send the next on-demand item when the bandwidth becomes available; column 7, lines 36-60 and Fig. 3c).

As to claim 20, Payton discloses a digital video system (Fig. 2; column 4, lines 8-44), comprising:

a transmission channel (over digital transport system, 26; Fig. 2; column 4, lines 45-64);

a plurality of receivers coupled to the transmission channel (local servers, 28 for each subscriber; Fig. 2; column 4, lines 45-54), a client at each receiver capable of subscribing to one or more VOD sessions over a transport stream (column 6, lines 20-36 and column 7, lines 13-35);

a headend (24) coupled to the transmission channel (Fig. 2), said headend including a video server that can transmit one or more video sessions to one or more receivers (column 4, line 55-column 5, line 5 and column 7, lines 13-35), and a control server coupled to the video server (scheduling processor; 46; Fig. 2), the control server to cause the video server to transmit one or more dummy sessions over the transport stream (transmitting content which has not been requested, but is recommended for some subscribers; column 5, lines 6-31 and column 7, lines 36-47) to maintain a predetermined minimum bandwidth of content over the transport stream (column 7, lines 36-60).

As to claim 21, Payton discloses wherein the control server is configured to determine whether the bandwidth of content over the transport stream is below a predetermined threshold (wherein it is determined that the used bandwidth is low enough to allow the transport of additional VOD content; column 7, lines 36-47) and to cause the video server to transmit one or more dummy sessions, as necessary, to maintain the bandwidth of content at the predetermined threshold (wherein the utilized bandwidth level falls low enough to allow the transport of additional content, the available content is then utilized to transport a recommended movie; column 7, lines 36-60 and column 5, lines 22-31).

As to claim 22, Payton discloses wherein the headend transmits digital video programming in accordance to one of a digital broadcast satellite system (Fig. 2; column 5, lines 55-67), digital cable system (column 5, lines 55-67) and video-on-demand system (column 4, lines 8-22).

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Brown (5,822,530) (of record).

As to claim 1, Brown discloses a video on demand system (Fig. 1; column 2, lines 46-62), comprising:

a transmission channel (110);

a plurality of receivers coupled to the transmission channel (105), a VOD client at each receiver capable of subscribing to one or more VOD sessions over a transport stream (column 6, lines 9-19);

a headend coupled to the transmission channel (115), said headend including a video server that can transmit one or more VOD session to one or more receivers (column 6, lines 9-19), and a control server coupled to the video server (connection manager, 345; Fig. 11), the control server to dynamically allocate (column 6, lines 9-19) and terminate VOD sessions (at the point in time when the presentation ends; column 6, lines 9-19) over the transport stream as VOD clients are added and terminated (column 6, lines 9-19), and, *if necessary, to cause the video server to transmit one or more dummy sessions over the transport stream to maintain a predetermined minimum bandwidth of content over the transport stream* (wherein the transmission of dummy sessions is not necessary or considered by Brown's system).

### ***Response to Arguments***

5. Applicant's arguments, see pages 3-5, of applicant's response, filed 02/02/06, with respect to the "session" limitation contained within the rejection(s) of claim(s) 1, 10 and 20 under Nelson have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Payton.

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6. Applicant's arguments filed 02/02/06, in regards to the rejection of claim 1 under Brown, have been fully considered but they are not persuasive.

On pages 7 and 8, of applicant's response, applicant argues that Brown fails to disclose transmitting dummy sessions to maintain a predetermined minimum bandwidth.

In response, as indicated in the previous rejection and above, the current language of claim 1 specifically requires that the creation of the dummy sessions only take place "if necessary". As Brown discloses a fully functional VOD system wherein the dummy sessions are neither necessary or considered, the disclosed VOD system meets the current claim limitations.

### ***Conclusion***

7. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

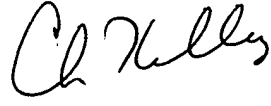
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sheleheda whose telephone number is (571) 272-7357. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

James Sheleheda  
Patent Examiner  
Art Unit 2623

JS

  
**CHRIS KELLEY**  
**SUPERVISORY PATENT EXAMINER**  
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